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DIVISION OF HEALTH CARE
FINANCE AND POLICY
2010 MAY 27 P 3:18
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May 27, 2010

BY HAND

Honorable David Morales
Commissioner
Division of Health Care Finance and Policy
2 Boylston Street, 5th Floor
Boston, MA 02116

Re: **Proposed Regulation 114.5 CMR 21.00; "Health Care Payer Claims
Data Submission"**

Dear Commissioner Morales:

I am writing on behalf of our client, Aflac. As you may know, Aflac is the leading writer of supplemental health insurance products in the United States.

Aflac respectfully submits the following comments regarding the scope of proposed regulation 114.5 CMR 21.00 (the "Proposed Regulation"). For the reasons set forth below, Aflac believes that it was not the intent of the Legislature in enacting Chapter 305 of the Acts of 2008, nor would it be prudent from a public policy or pragmatic point of view, for the scope of the Proposed Regulation to apply to supplemental insurance writers. Therefore, Aflac recommends that the scope of the Proposed Regulation be clarified so as to apply only to comprehensive major medical insurance writers and to exclude supplemental health insurance writers.

By way of background, Supplemental health insurance encompasses a variety of health insurance products that are not intended to replace or be issued in lieu of comprehensive major medical coverage. Common types of supplemental health insurance include hospital indemnity, disability income, specified disease, critical illness, accident only, dental and vision. Whereas comprehensive major medical coverage is designed to pay

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doctors and hospitals for providing medical care, supplemental benefits generally take the form of fixed cash payments directly to the policyholder to offset the personal expenses they incur as the result of a serious accident or illness.

Supplemental products are distinguished from comprehensive major medical products under the federal Public Health Services Act and the recently enacted Patient Protection and Affordable Care Act (in which supplemental products are referred to as "excepted benefits"). Likewise, pursuant to Massachusetts state law, supplemental products are excluded from the definition of "health benefit plan" under M.G.L. c. 176J and c. 176Q and from the definition of "credible coverage" under M.G.L. c. 111M. In short, public policy makers at both the federal and state levels recognize that there are critical differences between comprehensive major medical insurance and supplemental health insurance. Thus, purely as a matter of public policy, there is justification for treating supplemental health insurance differently from comprehensive health insurance under the Proposed Regulation.

Moreover, it would be impractical and not cost effective for the Division of Health Care Finance and Policy ("DHCFF") to seek claims data from supplemental health insurers. The reason for this is supplemental health insurance does not pay health care providers. Thus, the coverage does not yield the type of health care claims data that DHCFF seeks to collect pursuant to the Proposed Regulation or which was apparently contemplated by the Legislature when it enacted Chapter 305 of the Acts of 2008.

Furthermore, the information that the Proposed Regulation seeks regarding matters such as plan design and insurer reserves that would be provided by a supplemental insurance writer would be incongruous with the type of information provided by an insurer or HMO that writes major medical insurance. Simply stated, many of the information requests DCHFP proposes to make would be not applicable to Aflac or would be requests for which Aflac would have no responsive information. Accordingly, it appears self-evident that it would not be in the public interest to include data from supplemental insurance companies such as Aflac in the all payer claims data base DHCFF proposes to establish.

Notwithstanding the foregoing, the definition of "Health Care Payer" in the Proposed Regulation is arguably broad enough that supplemental insurance writers, such as Aflac, could be required to provide data to DHCFF. Aflac believes that would result in unnecessary time and expense to both DHCFF and companies such as Aflac.

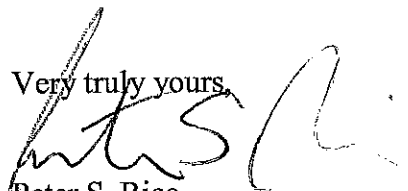
To eliminate this potential problem, Aflac recommends that DCHFP amend the scope of the Proposed Regulation to clarify that it shall not apply to insurers that do not write Health Benefit Plans as defined in M.G.L. c. 176J and c. 176Q. As noted above, that definition excludes most, if not all, forms of supplemental, indemnity based health

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insurance plans that are issued in the commonwealth and would focus the Proposed Regulation on the types of insurers which maintain the kinds of information sought by the Proposed Regulation.

Thank you for your consideration of Aflac's views.

Very truly yours,


Peter S. Rice

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